UNITED
NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/SR.405
22 November 1999

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Twenty-third session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 405th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 17 November 1999, at 10 a.m.

Chairman: Mr. BURNS

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.405/Add.1.

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GE.99-45754 (E)

The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Initial report of Uzbekistan (CAT/C/32/Add.3)

1. At the invitation of the Chairman, the members of the delegation of Uzbekistan (Mr. Alisher Vahidov, Mr. Pulatov, Mr. Usmanov and Mr. Karimov) took places at the Committee table.

2. The CHAIRMAN invited the head of the delegation to introduce the members of his delegation and to present the initial report.

3. Mr. ALISHER VAHIDOV (Uzbekistan) begged the indulgence of the Committee, since it was Uzbekistan's first report, and the delegation's first meeting with the Committee, as they lacked experience of reporting and of the Committee's procedures. Since the Republic of Uzbekistan had gained independence, the ensuing economic and democratic transformations had meant that the authorities were faced with completely new tasks. In the field of human rights alone, Uzbekistan had already ratified more than 40 international instruments and agreements with varying degrees of legal force, including the Convention against Torture, which had been ratified by the Uzbek Parliament on 31 August 1995.

4. The practice of torture and other cruel, inhuman or degrading treatment or punishment was directly prohibited by the laws of Uzbekistan, particularly article 25 of the Constitution ("Everyone shall have the right of freedom and personal inviolability. No one shall be detained or held in custody except as provided for by law") and article 26 ("No one shall be subjected to torture, violence, or other cruel or degrading treatment"). In addition, legislative, administrative and judicial protection mechanisms had been created. Specific laws prohibiting action contrary to human rights and forming the structure of legislative guarantees were contained in articles 18 to 46 of the Constitution and in many other legislative Acts, including the Criminal Code (1994), the Code of Criminal Procedure (1994), the Administrative Liability Code (1994) and the Code for the Execution of Criminal Penalties (1997). Guarantees protecting persons suspected of a crime were also included in the Code of Criminal Procedure (arts. 11 to 27).

5. The system of legislative guarantees also comprised statutory norms (para. 60) and was supplemented by subsidiary legislation, such as presidential decrees and orders, decisions of the Supreme Court sitting in plenary session, and a corpus of regulations by departments such as the Ministry of Internal Affairs, the National Security Service, and the Public Procurator's Office. Under Uzbekistan's criminal legislation, members of the law enforcement agencies were held liable for the practice of torture, cruel and inhuman treatment and punishment. The basic principles of the Criminal Code prohibited the practice of torture, and in its articles 1 to 10 established that it was a criminal act, punishable as such, and that its legal consequences were defined by the Criminal Code.

6. In addition to judicial guarantees, there was a working institutional mechanism for the protection of rights in criminal procedure, involving the highest administrative bodies of the

State, law enforcement agencies and extrajudicial entities.. However, despite the existing system of surveillance and monitoring of the observance of human rights, illegal acts of humiliating and degrading treatment and punishment were still encountered in the activities of several law enforcement agencies. The latter tended to cover up violations and shield the perpetrators. Even convicted wrongdoers had in some cases subsequently been rehabilitated by the courts. Only 19 persons from the law enforcement agencies had been convicted for crimes covered by articles 235 and 236 of the Criminal Code. The Convention was further violated by concealment of wrongful arrest. Only seven such cases had actually been registered nationwide the previous year, but a check done in Samarkand by the Procurator's Office had uncovered five cases there alone involving internal affairs personnel. Checks had also revealed breaches of the law regarding custody of convicted persons, such as overcrowding, unsanitary conditions, lack of access to medical assistance, and severe violations of legality by prison warders and others. Eleven persons from the law enforcement agencies had been sentenced to long periods of imprisonment for prosecution of an innocent party, unlawful arrest and coercion to testify.

7. Acknowledging their responsibility before the international community for observing ratified human rights agreements, the law enforcement authorities of Uzbekistan were attempting to pursue a coordinated policy. On the initiative of the Procurator's Office, the heads of the law enforcement agencies, in collaboration with the Ombudsman, the National Centre for Human Rights and the Makhallya charitable foundation, had created a Coordinating Council of Law-Enforcement Authorities (para. 64). One of its principal objectives was to effect radical changes in the way preliminary inquiries and investigations were carried out, and in the administration of justice and punishments, with a view to preventing human rights abuses.

8. Punishments and other actions of the law were not intended to cause physical suffering or humiliation. Strict punishments could be imposed only if the aim could not be achieved by gentler measures. Moreover the punishment must be just and fitted to the seriousness of the crime, the degree of criminal responsibility and the danger the convicted person represented for society.

9. Torture and cruel treatment was also prohibited by articles 230 to 241 of chapter XVI of the Criminal Code, entitled "Offences against justice", which established the criminal responsibility of officials for wrongful prosecution, unjust sentencing, failure to enforce judicial decisions, and unlawful arrest and detention. Articles 234 and 235 established the criminal liability of officials for unlawful deprivation of liberty and physical or psychological pressure on suspects, the accused, witnesses, victims or experts. The sentences for such activities ranged from a fine to eight years' imprisonment.

10. The greatest number of violations were observed in the activities of the internal affairs agencies, and were mainly linked to a low level of legal and general education and poor theoretical training among senior staff. The authorities of the Republic were currently dismissing incompetent officers found guilty of irregularities. A presidential order on the establishment of commissions to evaluate senior staff in internal affairs agencies of the Republic of Uzbekistan had noted that cooperation between the Ministry of Internal Affairs and the law enforcement agencies had failed to lead to a reduction in criminal practices by the Uzbek authorities. Abuse of authority, unacceptable treatment of citizens and other shortcomings were common. It had been decided that all internal affairs staff should be regularly evaluated.

11. The dynamics of change were reflected in the report prepared by various ministries and departments in collaboration with relevant NGOs. Uzbekistan was currently making solid progress towards democracy. The greatest problem was aligning its legislation with international law. In that connection, the National Centre of the Republic of Uzbekistan had prepared its report on implementation of the Convention against Torture, which was a vital component of the democratic reforms being carried out in the Republic.

12. The CHAIRMAN thanked the head of delegation for his statement, and invited the Country Rapporteur to put questions to the delegation.

13. Mr. CAMARA (Country Rapporteur) welcomed the delegation to their first meeting with the Committee. He assured them that he had been favourably impressed by the report, which was frank and exhaustive; it asked the questions that needed to be asked, and did not try to cover up the unpleasant facts. Even States with much more experience rarely did better in the actual drafting of their reports.

14. Since so much detail had been given, he would concentrate his questions on several general broad areas, particularly definitions and the punishment for torture. The Constitution (art. 26, para. 2) explicitly prohibited the use of torture, which was punishable by imprisonment of up to nine years, but he would like confirmation of the actual definition of torture used in the statutes. He had several reservations, particularly regarding the role of international agreements in Uzbek law. Did the Convention only have the force of law if it was specifically incorporated into Uzbek law, or once a convention had been ratified, did it automatically have the same validity as any domestic law approved by the Parliament?

15. Another important issue was the scope or applicability of the laws against torture. For instance, if a non-official person had committed torture on the orders of or at the instigation of an official, how would the torturer be punished? On his reading of the definition, only officials could be prosecuted. However, under article 1 of the Convention, a person who committed torture at the instigation of a public official was also liable. That raised the issue of complicity under general criminal law. If the person who carried out the torture, not being a public official, was only prosecuted for "violence" would the public official, as an "accomplice", be liable to prosecution for torture? Since the punishment for torture was more severe than that for violence, would the public official, as the instigator, be punished more severely than the actual violator, acting as the "tool" of the public official? How was attempted torture punishable under criminal law?

16. With regard to articles 1, 2 and 4, he wanted more details on custody and preventive detention, particularly with regard to the length of detention and access to legal counsel. For instance, in what conditions did the person in detention have access to legal counsel, and after what period of detention was access to legal counsel mandatory? Could a detainee receive access to a medical doctor? What sort of monitoring regime was in place?

17. During exceptional states of emergency, were there any derogations from common law which had consequences for the prohibition of torture? Would torture not be punishable under a state of emergency or was it punishable in all circumstances, as required under article 2 of the

Convention? Paragraphs 45 to 49 of the report mentioned 155,965 written complaints but only 11 convictions. Given that discrepancy, was the system for follow-up of complaints really effective? Paragraphs 89 to 91 explained criminal liability for issuing unlawful judgements. He was concerned that judges could make mistakes and misinterpret the law or fail to apply it properly; the fear of subsequent prosecution for genuine mistakes might prevent judges from becoming involved in such cases. Could that be one explanation for the discrepancy between the number of complaints and convictions?

18. What was the exact role and position of the judiciary in the Uzbek system? What were the criteria and procedures for recruitment, training, career development, dismissal, retirement, complaints and particularly accountability? In most countries, a judge was not considered criminally liable for his decisions and sentences.

19. He was concerned by paragraph 79, which stated that Uzbek law did not contain any specific rules prohibiting the expulsion, return or extradition of a person to another State where there were substantial grounds for believing that he would be in danger of being subjected to torture. That clearly did not fully meet the objectives of the Convention. Did Uzbekistan have or was it planning to set up a specific system to punish all cases of torture? That did not seem to be the case according to the report. The Convention required "universal competence" to try cases of torture, whether they had been committed by citizens of Uzbekistan or foreign nationals, either on the territory of Uzbekistan or outside it. Torture must be judged and punished in all circumstances.

20. Reports from international human rights NGOs such as Amnesty International and Human Rights Watch detailed specific cases of behaviour which conflicted with the obligation to prevent torture and prosecute torturers. He felt that the legal system was making an effort, but the cases described demonstrated that the rule of law was not firmly established, and that impunity for perpetrators was still the norm. Legislation was valuable, but its real worth lay in its application and the action taken to ensure its enforcement. The political will existed in Uzbekistan to comply with its obligations under the Convention, but it appeared that they were not being fully implemented. Could the delegation confirm that point of view? The report had been sincere, substantive and detailed, but it showed that the State was not yet able to punish all cases of torture appropriately.

21. Mr. SILVA HENRIQUES GASPAR (Alternate Country Rapporteur), thanking the delegation of Uzbekistan for its very complete report, said that his remarks would focus on articles 10 to 16 of the Convention.

22. Concerning article 10, the Committee welcomed the measures taken in the area of training and the enormous efforts made with regard to human rights education. He asked what requirements had to be met in order to be hired by the law-enforcement authorities. Were the police able to attend theoretical or practical courses on rules for the treatment of detainees? He also wished to know what in-service training was provided to senior and middle-ranking officials, who, as the Government of Uzbekistan recognized in paragraph 127, were still greatly influenced by the stereotypes of the administrative command system. The initial report said nothing about how prison doctors were made aware of the particular needs of detainees. What in-service training was offered to judges?

23. The Committee noted the frank admission in paragraphs 143 and 144 that serious shortcomings persisted in the handling of cases and that the Supreme Court had drawn attention to the need for strict observance of procedural law during the hearing of criminal cases (para. 146). The Committee had received reports that suspects had not been allowed access to a lawyer, that lawyers were often not permitted to speak to a detainee for several days after the start of detention and even that some detainees had been ill-treated. Were any measures planned to deal with the apparent discrepancy between the instructions of the Supreme Court and the actual practice of law-enforcement officers?

24. Turning to articles 12 and 13 of the Convention, he observed that the initial report had very honestly acknowledged that instances of improper, demeaning or degrading treatment or punishment were still observed in the work of a number of law-enforcement bodies (para. 159) and that there were instances in which some law-enforcement bodies in practice ignored appeals by citizens or treated them in a purely formal manner (para. 170). What measures were contemplated to remedy that situation? Could the Procurator-General or the courts start investigations in order to verify and, where appropriate, punish failure to comply with regulations? Once an investigation had been started, what disciplinary bodies monitored the work of the courts and the police?

25. The Committee had received information according to which the courts, including the Supreme Court, continued to consider admissible confessions which had been obtained under duress. What measures had been taken to ensure that the courts complied with the Supreme Court decision invalidating evidence obtained in an unlawful manner (para. 172)? When allegations of torture or ill-treatment were made, did the courts order investigations, and were such investigations actually carried out in full?

26. Turning to article 16 of the Convention, he would like to know whether detainees were adequately informed of their rights, including the right to lodge a complaint. Could information be provided on the prison population? According to a report recently published by one non-governmental organization (NGO), there were currently 100,000 prisoners in Uzbekistan, half of them following convictions relating to religious questions. Amnesty International had reported that two prison camps had been set up in a remote region of the country, where the conditions were deplorable and forced labour commonplace. The Committee had been informed by other NGOs that 36 inmates had died as a result of being tortured in a camp in Djasluk and that 38 prisoners had died in 1998 in a camp near Jaslik. Could the Uzbek delegation comment on those allegations? Were the deaths of persons in detention systematically investigated? Was there an official register of prisons and prison population? Were statistics available on the application of the death penalty? What was the method of execution?

27. Mr. MAVROMMATIS commended the Uzbek delegation on what was probably the most candid country report that he had read in several decades. What he found particularly striking in the report was the large number of complaints and allegations of human rights violations. Judges apparently did not have security of appointment or immunity for judgments rendered, and the judicial system seemed to lack machinery for actually implementing the appeal and review process. Uzbekistan might wish to note that the Office of the High Commissioner for Human Rights produced excellent training manuals for use in training the police.

28. He had a number of specific questions. Paragraph 46 contained the very high figure of 155,965 complaints, of which 110,513 had been found to be true. That was encouraging, because it meant that the process was working; the Committee had never seen such a high ratio before. Was there any information on what had actually been done in response to the complaints? Paragraph 53 stated that the overwhelming majority of complaints received by the Ombudsman had concerned the work of the courts and the law-enforcement authorities. Could more information be given on the nature of the complaints? Had anything been done about them? He also inquired whether legal aid was available to persons of modest means. According to paragraph 55, legal advice had been given in each case involving a complaint of a human rights violation committed by the law-enforcement authorities. Could the Uzbek delegation inform the Committee what that advice had been? What action had been taken on the complaints referred to in that paragraph?

29. Some of the offences listed in paragraph 59 did not seem to be serious enough to warrant the death penalty, which in any case Uzbekistan should be working to abolish. Paragraph 58 stated that the death penalty was proscribed for women. What was the logic behind excluding women from that form of punishment?

30. In connection with paragraph 66, he inquired whether there were any independent bodies which visited prisons, since that would help ensure that prison conditions were in compliance with the provisions of the Convention. Lastly, paragraph 82 stated that it was a criminal offence to prosecute for a socially dangerous act a person known to be innocent. He would like to know what a "socially dangerous act" was. How could it be established that judicial officers had known at the time that a person had been innocent?

31. Mr. YU Mengjia, returning to a point made by Mr. Silva Henriques Gaspar, said that if unqualified people were recruited, they could subsequently be removed, but by then the wrong might have already been done; hence the importance of proper hiring. Could the Uzbek delegation describe how recruitment worked? He would like to know what was meant in paragraph 120 by "national particularities" which should be given particular attention in shaping legal awareness. Concerning paragraph 144, would Uzbekistan consider introducing machinery to prevent unjustified refusal to grant applications made by parties to proceedings? According to paragraph 171, redress for moral injury caused by unlawful acts was not very common. How did Uzbekistan intend to remedy that situation?

32. Mr. GONZÁLEZ POBLETE, referring to paragraph 125, asked whether any provisions were being considered to require the police to inform detainees of their rights without delay. Torture could often take place precisely because detainees had been unable to inform their families of their whereabouts. Likewise, detainees must have the right to consult a doctor and to have access to a lawyer from the outset of detention. What provisions enshrined those rights?

33. Mr. YAKOVLEV asked whether statistical material was available for recent years on arrests and convictions, persons held in pre-trial detention and the reasons for arrest. What trends had emerged?

34. Mr. SØRENSEN said the Committee had received a large number of complaints of ill-treatment and underscored the need for redress, compensation and rehabilitation for victims of

torture. It was especially important for a country undergoing transition and which sought to establish a basis for democracy to acknowledge that ill-treatment took place and to recognize that it was wrong. Rehabilitation too was of prime importance. Persons subjected to severe torture should be entitled to treatment, as in many cases they could not function without it. The Government should consider establishing a rehabilitation centre for torture victims. The international community had set up the United Nations Voluntary Fund for Victims of Torture, which required money, but also was in need of moral support. Notwithstanding the economic difficulties faced by Uzbekistan, the Government could bolster the fund greatly by providing even a symbolic contribution, thereby also performing a gesture of great symbolic importance for torture victims within the country.

35. The CHAIRMAN said that Uzbekistan, as a former constituent republic of the Soviet Union, faced the same challenges as the other former republics, including the transition from a "command economy" to a market economy. Similarly, the justice system had under the Soviet model been a "command justice" system, in which the judges generally toed the line imposed by others, and especially by the procurators. The central role of the procurator in the Soviet system was an aspect that all the former Soviet republics had to overcome if they genuinely wanted to establish a system ensuing human rights. In such a system, the respective roles of procurators and judges would be clearly delineated, with the judges having more authority and acting as essential guarantors of human rights.

36. According to Amnesty International, the plenum of the Supreme Court of Uzbekistan had recently handed down a ruling to the effect that article 44 of the Constitution empowered the courts to examine any complaints about illegal actions carried out by State authorities. That was a very important ascription of authority by the Supreme Court, and one which the Committee would support. However, in practice, most courts, including the Supreme Court itself, continued to ignore that directive and failed to react to complaints of torture and ill-treatment, regardless of whether the complaints were lodged with them or were alleged in the context of trial proceedings. As a number of Committee members had noted, in the transformation of the State, the human aspect would ultimately be of prime importance. It could take one or two generations before the system began to work as it should.

37. How did the criminal legal process operate in Uzbekistan? Could police officers carry out summary arrests for the purposes of investigation, or did they require a warrant or other authorization issued by a court or procurator? If such arrests were allowed, what was the maximum duration of pre-trial detention? Was such detention renewable upon the order of a procurator or court? In his opinion, a detained person who was denied access to a lawyer or doctor of his choosing or to relatives would be considered to be held incommunicado, regardless of whether that person had access to a procurator, who would anyway be part of the "command justice" system. Was such incommunicado detention ever practised? If so, for how long? Was there any judicial order or writ similar to the writ of habeas corpus, whereby any person could petition a court to examine the validity of detention? It would appear that the Supreme Court had, with its ruling, attributed such a right to the courts.

38. Was the death penalty, which remained officially applicable in the legislation, still carried out? It would be helpful if the delegation could provide statistics on the numbers of executions carried out and death sentences handed down in the past two years. What were the

means of execution, and were convicts executed in public or in private? Did the practice of enacting general amnesty laws exist in Uzbekistan? If so, to which crimes would such laws apply? Would they apply to torture?

39. The Committee had received a great deal of information from non-governmental organizations on maltreatment, of which there appeared to be an inordinate number of cases. It would be most appreciated if the delegation could comment on those cases. He was especially distressed by the large number of women who had apparently been victims of ill-treatment. According to the Human Rights Society of Uzbekistan, which gave some disturbing details, torture of women was becoming increasingly frequent. Could the delegation provide any information at all on the frequency of complaints, and if so, could it provide sex-disaggregated data so as to permit the Committee to obtain a better idea of the situation?

40. Amnesty International had claimed that there were two unofficial prison camps in remote desert areas of the country, where the majority of the prisoners were reportedly members of independent Islamic congregations accused of supporting the banned Islamic political opposition. Conditions of confinement were allegedly very harsh, with prisoners subjected to forced labour being denied adequate amounts of drinking water. Could the delegation confirm or deny the existence of the camps? If they did exist, could it comment on the conditions prevailing there?

41. The proposal to establish a commission for the appraisal of the performance of justice staff was most impressive. Any such assessment should not be confined to the lower echelons, but should be applied as well to high-ranking officials who had made policy in the past, all the more so since the justice system was undergoing a transformation from a command-from-above regime. That proposal reflected the desire of the Government to usher in a genuinely rights-based, democratic society.

The public part of the meeting rose at 11.35 a.m.